

Oppose HB 555 – Insureds Have Right To Be Made Whole BEFORE the Health Plans Subrogate or Exclude Payment of Benefits From Negligent Third Parties.

We agree a health insurer is entitled to coordinate medical benefits with medical payments coverage entities - we have consistently agreed participants can't receive 2 payments (from a health insurer or another payor that is solely for medical payments, e.g., worker's compensation medical benefits and automobile medical payments coverage). Look at the fiscal note, the state plan has not paid any such claims. Such claims for double payment of medical payment coverage is expressly prohibited by *Newbury v. State Farm*, 2008 MT 156.

We disagree with Section (1)(a) where it would allow insurers to avoid payment of medical benefits when there is **third-party liability** coverage intended to pay other damages such as lost wages and other medical bills not covered by the health insurer. The **whole purpose of this bill** is at - page 2, lines 13-15; page 4, lines 21-23 and page 6, lines 17-19 - where **insurers seek to strip their insureds of their individual, constitutional right to be made whole before insurers can subrogate.**

For example, participant suffers \$15,000 lost wages, \$40,000 medical costs, and negligent third party has the required minimum of \$25,000 liability coverage, a not unusual circumstance. **Under HB 555 if the negligent 3rd party even acknowledges there is \$25,000 coverage available** (page 2, lines 22-23), the insurer is entitled to determine that "we are not responsible to pay the the first \$25,000 medical costs." If the third party pays the \$25,000, this leaves the participant with payment of co-pays and deductibles for medical bills and **zero \$ for lost wages and other damages.** This is completely contrary to the individual's constitutional rights and it leaves the insureds with no further recourse.

By inserting "third-party liability coverage" and precluding application of subrogation statutes or the made whole doctrine, HB 555 grants insurers the right to attribute any or all of the monies from a general liability policy to medical costs, refuse to pay legitimate medical claims, and force their insureds to potentially take money out of their own pockets, even if the insured is far from made whole. Under the moniker of "no duplication of benefits" the insurers would in fact be excluding payment without the protections of the subrogation statutes, statutes that allow legitimate subrogation.

This legislation attempts to do what the Montana Insurance Commissioner and the Montana Supreme Court have denied - give insurers the right to take third-party liability coverage money that rightfully belongs to the insured before the insured has been made whole for the damages they have suffered. HB 555 is bad public policy that places insurers above the individuals they are supposed to be serving.

Examples on back side.

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How HB 555 works with **third party liability payments** compared to current law that requires that the insured must be made whole . The examples do not provide any compensation for general damages to the injured employee.

#1 Participant injured by negligent driver with \$25,000 liability insurance.

\$40,000 damages - \$25,000 medical, \$15,000 lost wages.

	Employee Damages – Under HB 555	Participant Damages – Under Made Whole Doctrine
Total Damages	\$40,000.00	\$40,000.00
Health Plan Pays	\$0.00	\$15,000.00
Liability Insurer Pays	\$25,000.00	\$25,000.00 (\$10k medical, \$15k wages)
Participant Loss	\$15,000.00	\$0.00

#2 Participant injured by negligent driver, with \$25,000 liability insurance.

Participant has \$5,000 automobile medical payment coverage.

\$40,000 damages - \$25,000 medical, \$15,000 lost wages.

	Participant Damages – Under HB 555	Participant Damages – Under Made Whole Doctrine
Total Damages	\$40,000.00	\$40,000.00
Health Plan Pays	\$0.00	\$10,000.00
Liability Insurer Pays	\$25,000.00	\$25,000.00 (\$10k medical, \$15k wages)
Automobile Medical Payment	\$5,000.00	\$5,000.00
Participant Loss	\$10,000.00	\$0.00

#3 Participant injured by negligent driver, with \$25,000 liability insurance.

Participant has \$5,000 automobile medical payment coverage.

\$30,000 damages - \$30,000 medical.

	Participant Damages – Under HB 555	Participant Damages – Under Made Whole Doctrine
Total Damages	\$30,000.00	\$30,000.00
Health Plan Pays	\$0.00	\$0.00
Liability Insurer Pays	\$25,000.00	\$25,000.00
Automobile Medical Payment	\$5,000.00	\$5,000.00
Participant Loss	\$0.00	\$0.00

Current Law

2-18-901. Subrogation rights. A disability insurance policy subject to this chapter may contain a provision providing that, to the extent necessary for reimbursement of benefits paid to or on behalf of the insured, the insurer is entitled to subrogation, as provided for in 2-18-902, against a judgment or recovery received by the insured from a third party found liable for a wrongful act or omission that caused the injury necessitating benefit payments.

2-18-902. Notice -- shared costs of third-party action -- limitation. (1) If an insured intends to institute an action for damages against a third party, the insured shall give the insurer reasonable notice of the intention to institute the action.

(2) The insured may request that the insurer pay a proportionate share of the reasonable costs of the third-party action, including attorney fees.

(3) An insurer may elect not to participate in the cost of the action. If an election is made, the insurer waives 50% of any subrogation rights granted to it by 2-18-901.

(4) The insurer's right of subrogation granted in 2-18-901 may not be enforced until the injured insured has been fully compensated for the insured's injuries.

33-30-1101. Subrogation rights. A hospital or medical service plan contract issued by a health service corporation may contain a provision providing that, to the extent necessary for reimbursement of benefits paid to or on behalf of the insured, the health service corporation is entitled to subrogation, as provided for in 33-30-1102, against a judgment or recovery received by the insured from a third party found liable for a wrongful act or omission that caused the injury necessitating benefit payments.

33-30-1102. Notice -- shared costs of third-party action -- limitation. (1) If an insured intends to institute an action for damages against a third party, the insured shall give the health service corporation reasonable notice of the intention to institute the action.

(2) The insured may request that the health service corporation pay a proportionate share of the reasonable costs of the third-party action, including attorney fees.

(3) A health service corporation may elect not to participate in the cost of the action. If that election is made, the health service corporation waives 50% of any subrogation rights granted to it by 33-30-1101.

(4) The health service corporation's right of subrogation granted in 33-30-1101 may not be enforced until the injured insured has been fully compensated for the insured's injuries.